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18 *SIMO Holdings Inc. and Skyroam, Inc.*

19 UNITED STATES DISTRICT COURT

20 NORTHERN DISTRICT OF CALIFORNIA

21 HONG KONG UCLOUDLINK NETWORK
22 TECHNOLOGY LIMITED AND
UCLOUDLINK (AMERICA), LTD.,

23 Plaintiffs,

24 vs.

25 SIMO HOLDINGS INC. AND SKYROAM,
26 INC.,

27 Defendants.

Case No.: 18-cv-05031-EMC

**SIMO HOLDINGS INC. AND SKYROAM,
INC.'S NOTICE OF MOTION AND
MOTION FOR LEAVE TO FILE MOTION
FOR RECONSIDERATION OF DISMISSAL
OF COUNTERCLAIMS WITH PREJUDICE**

Judge: Edward M. Chen

NOTICE OF MOTION AND REQUESTED RELIEF

TO ALL PARTIES AND THEIR ATTORNEYS OF RECORD:

PLEASE TAKE NOTICE that Defendants and Counterclaimants SIMO Holdings, Inc. and Skyroam, Inc. (collectively “Defendants” or “SIMO”) will and hereby do move this Court, pursuant to Civil L.R. 7-9, for leave to file a Motion For Leave To File Motion For Reconsideration Of Dismissal Of Counterclaims With Prejudice motion for reconsideration of this Court’s Order Dismissing SIMO’s Counterclaims with prejudice. (D.I. 103). As stated before this Court at the July 11, 2020 status conference, SIMO seeks reconsideration only with respect to this Court’s conclusion that SIMO’s counterclaims are dismissed *with prejudice* such that it may bring these conspiracy claims in the action pending between SIMO and uCloudlink Hong Kong and related uCloudlink entities in the Eastern District of Texas. SIMO therefore respectfully requests that this Court amend this Order to dismiss the counterclaims *without prejudice*.¹

This motion is based on this Notice and Motion, the accompanying exhibits, the Declaration of Jeffrey Johnson in Support of Defendants’ Motion, the pleadings on file in this case, matters on which this Court may take judicial notice, and such oral argument as the Court permits.

Defendants have notified counsel for Hong Kong uCloudlink Network Technology Limited and uCloudlink (America), Ltd. (collectively “Plaintiffs” or “uCloudlink”) of their intent to file this motion. uCloudlink opposes SIMO’s motion.

¹ In the alternative, SIMO requests that the Court grant leave to amend to plead the newly-discovered facts and grant a transfer of these claims to the Eastern District of Texas where litigation concerning additional trade secret claims already is pending and jurisdiction lies against uCloudlink Shenzhen.

**MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE MOTION
FOR RECONSIDERATION**

Pursuant to Civil L.R. 7–9, Defendants and Counterclaimants SIMO Holdings, Inc. and Skyroam, Inc. (collectively “SIMO” or “Skyroam,”) respectfully request leave of this Court to file a motion for reconsideration of this Court’s Order granting, *with prejudice*, the motion to dismiss SIMO’s 5th and 6th counterclaims filed by Plaintiffs and Counterdefendants Hong Kong uCloudlink Limited (“uCloudlink Hong Kong”) and uCloudlink (America) Ltd. (“uCloudlink America”). D.I. 103. As stated before this Court at the July 11, 2020 status conference, SIMO seeks reconsideration only with respect to this Court’s conclusion that SIMO’s counterclaims are dismissed *with prejudice* such that it may bring these conspiracy claims in the action pending between SIMO and uCloudlink Hong Kong and related uCloudlink entities in the Eastern District of Texas. SIMO therefore respectfully requests that this Court amend this Order to dismiss the counterclaims *without prejudice*.²

In its Order dismissing SIMO’s counterclaims in September 2019, this Court concluded that SIMO’s conspiracy allegations were implausible because: (1) “[t]he only allegation that addresses the timing allegation is the allegation that [Wen Gao³] ‘directed’ [Bin Wang] to leave Huawei in 2013,” which the Court found conclusory absent “specific factual allegations to back up this claim”; and (2) “the plausibility of any ‘direction’ given by [Wen Gao] is questionable given that it was given two years after [Wen Gao] left Huawei, where he and Wang Bin both worked—at least in the absence of any specific factual allegation corroborating the claims.” D.I. 103 at 10.

The emergence of new, material facts since that time, including SEC filings by uCloudlink Hong Kong’s parent company, has exposed that the sworn testimony upon which SIMO’s conspiracy allegations were based was *false*. These new facts provide additional corroboration, lend plausibility to SIMO’s conspiracy allegations, and moot the Court’s reasoning. Specifically, the following new and material facts have emerged since this Court’s Order:

² In the alternative, SIMO requests that the Court grant leave to amend to plead the newly-discovered facts and grant a transfer of these claims to the Eastern District of Texas where litigation concerning additional trade secret claims already is pending and jurisdiction lies against uCloudlink Shenzhen.

³ Hereafter, SIMO transposes to the names of Wen Gao and Bin Wang from that which the parties have previously used in order to be consistent with the western use of surnames after given names.

- 1 • uCloudlink Hong Kong, the first uCloudlink entity, was incorporated in 2010, while
2 Wen Gao still was a senior executive at Huawei. Johnson Decl. Ex. C. [REDACTED]
3 [REDACTED]
4 [REDACTED].
- 5 • Mr. Gao owned only 3% of uCloudlink Hong Kong at its founding. *Id.* Ex. C. [REDACTED]
6 [REDACTED].
- 7 • When it was founded, 97% of uCloudlink Hong Kong was owned by Chaohui Chen,
8 Zhiping Peng, and Jilin Li, all of whom were current Huawei senior executives. *Id.* Ex.
9 D. [REDACTED]
10 [REDACTED]
11 [REDACTED].
- 12 • While Mr. Gao left Huawei for uCloudlink in 2011, his co-founders, Mr. Chen, Mr.
13 Peng, and Mr. Li, stayed at Huawei as senior executives with Bin Wang, who indisput-
14 ably stole SIMO's trade secrets and brought them to uCloudlink, up through and after
15 Mr. Bin's departure from Huawei for Skyroam in 2013. *Id.* Ex. F.
- 16 • Mr. Chen has been the "director and chief executive officer" since 2015, and is a
17 "founder," of uCloudlink's ultimate parent and holding company, uCloudlink Group,
18 Inc. *Id.* Ex. F. [REDACTED]
19 [REDACTED]
20 [REDACTED].
- 21 • Mr. Peng has been the "chairman of the board of directors" since 2015, and is a
22 "founder," of uCloudlink Group. *Id.* Ex. F.
- 23 • Mr. Chen and Mr. Peng are the majority and controlling owners of uCloudlink Group,
24 Inc. *Id.* Ex. F.
- 25 • [REDACTED]
26 [REDACTED]. Newly-available facts reveal
27 that Mr. Gao himself has been an officer since 2015, and, as mentioned above, Mr.
28

Chen and Mr. Peng have been officers and directors at least since 2015, with whom Mr. Gao has had a business relationship for at least a decade. *Id.* Ex. F.

- Like Mr. Chen and Mr. Peng, uCloudlink Group’s chief financial officer, chief strategy officer, and chief R&D officer, Yimeng Shi, Zhu Tan, and Shubao Pei, respectively, all continued to work at Huawei with Bin Wang after Wen Gao’s departure before ultimately joining Wen Gao (and Bin Wang) at uCloudlink. *Id.* Ex. F.

SIMO exercised reasonable diligence in both discovering these facts and bringing this motion. SIMO discovered the facts relevant to this motion in April and May of 2020. After a reasonable period of time to assess the new facts and determine a course of action, SIMO notified uCloudlink and this Court that it intended to file this motion. D.I. 147 at 6–7. After the status conference, the parties met and conferred, and uCloudlink notified SIMO that it would oppose this motion on July 5, 2020. uCloudlink’s misconduct prevented SIMO from learning these facts earlier. Specifically, SIMO learned that the sworn testimony of Wen Gao, uCloudlink’s alleged sole founder and CEO, upon which the timing allegations rejected by this Court were substantially based, was false. None of the documents uncovered in late 2019 and 2020 (or any of the information contained therein) have been produced by uCloudlink in discovery.

In light of the requirement that a party first obtain leave before filing a motion for reconsideration under Civil L.R. 7–9(a), SIMO does not set forth the entirety of its reconsideration arguments here. To assist the Court’s evaluation of whether to grant leave, SIMO submits with this motion a Declaration of Jeffrey Johnson, Esq. which attaches SIMO’s proposed motion for reconsideration and exhibits thereto. SIMO’s proposed motion explores the merits of SIMO’s substantive request in more detail.

Because newly-discovered material facts have emerged that enable SIMO to plead facts that moot this Court’s prior reasoning supporting its dismissal, and especially because SIMO’s discovery of these facts was prevented at least by Wen Gao’s false testimony, SIMO respectfully moves for leave to file its motion for reconsideration so that SIMO may bring its claims in the Eastern District of Texas.

Date: August 5, 2020

/s/ Jeffrey C. Johnson

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